

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES**

Application No.: 09/934,735
Applicant: Rohit J. Parmar
Filed: August 8, 2001
Title: Method and Systems and Apparatuses for
Managing Specialized Healthcare Needs
Art Unit: 2162
Examiner: Corrielus, Jean M.
Docket: 119862.1000
Customer No.: 32914

MAIL STOP: APPEAL BRIEF PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

APPEAL BRIEF

Pursuant to the Final Rejection dated September 12, 2006, and the Notice of Appeal filed January 12, 2007, in the above-identified patent application, Appellant submits the following Appeal Brief.

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REAL PARTY IN INTEREST

The present application was assigned to Cardiovascular Provide Resources, Inc., by an assignment from the inventor recorded on January 7, 2002, in the Assignment Records of the United States Patent and Trademark Office at Reel 012420, Frame 0031.

RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Claims 1-17 have been canceled. Claims 18-37 are pending in the application. Claims 18-37 stand rejected pursuant to a Final Office Action mailed September 12, 2006 ("the Final Office Action").

STATUS OF AMENDMENTS

No amendment has been filed subsequent to the mailing of the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

The subject matter of Claims 18-37 pertains to a healthcare management system that provides for improved acquisition, organization and portability of a patient's test data.

Independent Claim 18 provides a cardiological healthcare management system that is operable on a computer that comprises the following:

- a system management database (page 6, lines 19-21; Figure 1; Figure 5);

- a data collection module – in communication with the database and configured to collect and store patient test data, patient information, and healthcare provider information. The data collection module comprises at least one test data entry form for recording patient cardiological test data (page 6, lines 21 to page 7, line 16; page 8, line 14 to page 9, line 14; page 12, line 5 to page 15, line 4; Figure 1; Figure 2; Figure 6);
- a data viewing and editing module – in communication with the database that is configured to limit access to modify the patient test data to preauthorized healthcare worker persons (page 7, line 15 to page 8, line 2; page 9, line 15 to page 10, line 22; page 12, lines 5-14; page 15, line 4 to page 16, line 4; Figure 1; Figure 3; Figure 7);
- a patient information access module – that is in communication with the database and being configured to limit access to view tests performed on the patient to the preauthorized healthcare worker persons (page 8, lines 3-8; page 11, lines 1-3; page 12, lines 5-14; page 17, line 9 to page 18, line 3; Figures 6A to 6C);
- a physician viewing module – that is in communication with the database operable to allow preauthorized physicians to view patient test data (page 11, lines 1-21; page 12, lines 5-14; page 16, line 5 to page 17, line 3; Figure 4; Figure 8; Figure 9);
- a report generation module – that is in communication with the database for producing reports from one or more selected items of patient test data (page 8, lines 8-14; page 12, lines 5-14; page 18, line 4 to page 19, line 2; Figure 10); and
- means for displaying an image on said visual display, said image including a listing of said modules, respectively (Figure 5).

Independent Claim 32 recites a method for collecting and reporting patient test data using a cardiological healthcare management system for specialized healthcare needs that includes the limitations of Claim 18 but includes the additional steps of:

producing reports for one or more selected items of patient test data pursuant to (page 3, lines 10-13 and 19-21; page 8, lines 11-13; page 17, lines 9-14):

providing an access image on said visual display (page 12, lines 5-14);

entering a name and a preauthorized password of a healthcare worker person in respective information entry slots of said access image to gain access to the data collection module (page 12, line 15 to page 13, line 9);

selecting a test data entry form for which data is to be collected (page 8, lines 18-20; page 10, line 9 to page 11, line 16; page 13, lines 1-3; page 14, lines 1-6);

recording account identification information of a patient whose data is to be collected and stored in the data collection module (page 13, line 18 to page 14, line 12; Figure 6A); and

recording the name of a physician and the name of a person entering data in the data collection module (page 8, lines 8-12; page 14, lines 15-21; Figure 6A).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether the rejection of claims 18-28 under 35 U.S.C. § 103(a), as being obvious over U.S. Patent No. 6,004,276 to Wright et al. (herein "Wright") and U.S. Patent No. 6,106,301 to Merrill (herein "Merril") was in error.

2. Whether the rejection of claims 18-37 under 35 U.S.C. § 103(a), as being obvious over Wright and U.S. Patent No. 6,006,191 to DiRienzo (herein "DiRienzo") was in error.

ARGUMENT

I. The rejection of Claims 18-28 under 35 U.S.C. § 103(a) as being unpatentable over Wright in view of Merril

A. Merril fails to overcome the deficiencies of Wright

In the Office Action dated September 12, 2006, the Examiner states that Wright recites all the limitations of Claim 18, except for one. The one limitation the Examiner admits that Wright fails to disclose is a visual display for displaying a listing of modules. (see Office Action at line 11 on page 3). The Examiner alleges that Merril's "implications", (see Office Action at line 22 on page 3), disclose this limitation that, in combination with Wright, renders the claimed invention obvious to one of ordinary skill in the art. (see Office Action at lines 1-8 on page 4). Merril does not teach this limitation, and Merril's combination with Wright fails to teach the claimed invention as a whole.

The claimed invention is to a health care management system comprising a system management database and various modules for entering, storing and viewing a patient's medical records and provides a means for displaying a list of the various modules. (see Claim 18). Wright relates to an object-oriented information system comprising a family of work stations systems that can store information, etc. The Examiner correctly states that Wright does not disclose the use of displaying an image on said visual display said image including a listing of the modules. (see Office Action at line 11 on page 3). To assert that this limitation is obvious, the Examiner relies on Merril as stated in the Office Action:

On the other hand, Merrill discloses a monitoring training system that allows medical professional [sic] to enhance realism within a medical procedure simulation system by incorporating various peripherals in the form of mock medical instruments within an interface device utilized by the medical procedure simulation system to enable realistic simulation of various aspects of a medical procedure, wherein the computer device retrieve [sic] and processes data from the trainer based on sensor data received from the internal sensors, and sends the processed data to a display that provides a visual display simulating a realistic environment

showing simulated movement of the catheter through the heart and vasculature (col.2, lines 32-36; col.5, lines 18-50; col.6, lines 45-67).

Applicant submits that Examiner's reliance on Merril is misplaced. First, as the Examiner's own disclosure reflects, Merrill fails to teach (i) a means for visually displaying a list of the multiple modules (ii) for a system management database. Second, it would not have been obvious to one of ordinary skill in the art to combine Wright with Merril.

Nowhere in Merril is there any teaching of applicant's claimed feature of a "means for displaying an image on said visual display said image including a listing of said modules, respectively" as applicant claims for entering, storing, accessing and displaying patient records. Merril discloses only a simulation display within a medical procedure simulation system connected to mock medical instruments as peripherals within an interface device to more realistically simulate a medical procedure. The display of Merril emulates a display commonly used in actual surgical procedures in what appears to resemble the movement of a cursor on a computer screen in response to movement of a computer mouse, but where the "mouse" is a mock medical instrument (guidewire, catheter, etc.) and the cursor resembles the medical instrument on a display that simulates a particular surgical environment, such as catheter weaving through a blood vessel. Merril does not disclose or imply any further features for the display, including applicant's claimed feature of a means of displaying an image that includes a list of modules for displaying patient records.

Further, applicant submits that it would not have been obvious to one of ordinary skill in the art to combine Wright with Merril. There is no teaching or suggestion to combine the disclosures of Wright and Merril to arrive at the claimed invention. Merril fails to disclose a database management system for storing a patient's medical records. (It also lacks the claimed limitation of a visual display of a list of multiple database modules for displaying patient records as discussed above.) Likewise, there is nothing in Wright suggesting or teaching that the disclosure of Wright could be claimed with the Merril reference, assuming arguendo, that Merril disclosed that claimed limitation. A

basic requirement of establishing a *prima facie* case of obviousness is that the Examiner must show that the combination of references teaches all the claimed limitations. MPEP § 2143. Applicant thus respectfully submits that the Examiner has failed to establish a *prima facie* case of obviousness.

B. Merril is non-analogous art to Wright

Furthermore, the Examiner relies on non-analogous art to deconstruct applicant's invention. Wright is in the art of database management of patient records. Merril, in contrast, is in the art of education and training in the medical field. The only area of interest they have in common is the broad field of the medical arts, but asserting, as the Examiner has done, that their technology is in the same art strains the scope of each disclosure too far. The medical arts includes a broad range of teachings and it is not apparent, and the Examiner provides no explanation, as to who one of ordinary skill in the art is, or why such person would search references in the medical education field to address issues in patient database management. One is left to infer that the Examiner believes that a person designing a system to train physicians (Merril) is also familiar with database management of patient records (Wright), ostensibly because both may be physicians.

II. The rejection of Claims 18-37 under 35 U.S.C. § 103(a) as being unpatentable over Wright in view of DiRienzo

The Examiner alternatively relies on DiRienzo to overcome Wright's failure to disclose a "means for displaying an image on said visual display said image including a listing of said modules." However, like Merril, DiRienzo also fails to overcome Wright's deficiencies.

The Examiner's sole attempt to establish that DiRienzo discloses the claimed limitation is merely a restatement of the claimed limitation and citation to column 3, lines 8-19 of DiRienzo, which reads:

System 10 includes an image scanning and digitizing means 14 to transform the visual image from the medical X-ray film 12 or other documents into digital data, an image data storage and retrieval means 16 to store and selectively transfer digital data upon

request, a telecommunication means 18 to selectively receive digital data from the image data storage and retrieval means 16 for transmission to one of a plurality of remote visual display terminals each indicated as 20 upon request from the respective remote visual display terminal 20 through a corresponding communications network 21 such as a telephone line, satellite link, cable network or local area network such as Ethernet or an ISDN service for conversion to a visual image for display at the remote requesting site.

DiRienzo provides a system for scanning and digitizing X-ray film and documents into digital data and the data can be shown on a monitor and stored remotely and retrieved for a communications network. Applicant submits that there is no disclosure in DiRienzo for the claimed limitation of a “means for displaying an image on said visual display said image including a listing of said modules.” It is a basic requirement that in order to establish a *prima facie* case of obviousness, the combination of references must teach all the claim limitations. MPEP § 2143. Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness and is in error.

Other Errors

Given the fundamental errors addressed above, applicants have chosen not to address other errors in the examiner’s reasoning. The failure to address them should not be construed as acquiescence in the examiner’s reasoning.

CONCLUSION

In view of the errors noted above in the examiner's rejections of claims 18-37, applicants respectfully request the Board of Patent Appeals and Interferences to reverse the final rejection of the examiner and instruct the examiner to issue a notice of allowance of all claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP, referencing docket number 119862.1000.

Respectfully submitted,



Scott C. Sample, Ph.D.
Registration No. 52,189
Date: May 12, 2007

Correspondence To:

Gardere Wynne Sewell LLP
1601 Elm St, Suite 3000
Dallas, Texas 75201
Telephone: (214) 999-4712
Facsimile: (214) 999-3712

CLAIMS APPENDIX

Claim 18. A cardiological healthcare management system for specialized healthcare needs operable on one of a computer including a visual display and a network of computers including visual displays, respectively, comprising:

a system management database;

a data collection module in communication with the database and being configured to collect and store patient test data, patient information, and healthcare provider information, wherein the data collection module comprises at least one test data entry form for recording patient cardiological test data;

a data viewing and editing module in communication with the database and being configured to limit access to modify the patient test data to preauthorized healthcare worker persons;

a patient information access module in communication with the database and being configured to limit access to view tests performed on the patient to the preauthorized healthcare worker persons;

a physician viewing module in communication with the database operable to allow preauthorized physicians to view patient test data;

a report generation module in communication with the database for producing reports from one or more selected items of patient test data, and

means for displaying an image on said visual display, said image including a listing of said modules, respectively.

Claim 19. The system set forth in Claim 18 wherein:

the data collection module includes means providing a patient test data collection image on said visual display including information entry slots requiring entry of the name and a preauthorized password of a healthcare worker person to gain access to the data collection module.

Claim 20. The system set forth in Claim 19 wherein:

the data collection module includes an information entry slot on said patient test data collection image for selecting a test data entry form for which data is to be collected.

Claim 21. The system set forth in Claim 19 wherein:

the data collection module includes means for recording account identification information of a patient whose data is to be collected and stored in the data collection module.

Claim 22. The system set forth in Claim 19 wherein:

the data collection module includes means for recording the name of a physician and the name of a person entering data in the data collection module.

Claim 23. The system set forth in Claim 18 wherein:

the data viewing and editing module includes means providing an edit and view patient test data image on said visual display and including information entry slots requiring entry of the name of the healthcare worker person and an identifier for the healthcare worker person to gain access to patient test data.

Claim 24. The system set forth in Claim 23 wherein:

the data viewing and editing module includes means permitting authorized healthcare worker persons to select a test data entry form to be viewed or edited.

Claim 25. The system set forth in Claim 23 wherein:

the data viewing and editing module includes means providing for entering the name of the patient for whom the preauthorized healthcare worker person desires to view a test data entry form.

Claim 26. The system set forth in Claim 18 wherein:

the physician viewing module includes means providing an image on said visual display for reading patient test data and including information entry slots requiring entry of the name and an identifier of a preauthorized physician desiring to read selected patient test data.

Claim 27. The system set forth in Claim 26 wherein:

the physician viewing module includes means requiring entry of the name of the patient for whom patient test data is to be read and means for selecting particular test data.

Claim 28. The system set forth in Claim 18 wherein:

the patient information access module includes means for providing information to the healthcare worker person using the system of tests that have been performed on a patient whose name has been entered in the system by way of the patient information access module.

Claim 29. The system set forth in Claim 18 wherein:

the report generation module includes means providing for preauthorized healthcare worker persons to select a date and location of specific tests that have been performed on a patient for printing by way of the report generation module.

Claim 30. The system set forth in Claim ~~48~~ 29 wherein:

the report generation module includes means for selecting only tests which have not been previously read by a person having access to the system.

Claim 31. The system set forth in Claim 18 wherein:

the report generation module includes means providing printing of reports of plural tests performed on a patient whose name has been entered in the system.

Claim 32. A method for collecting and reporting patient test data using a cardiological healthcare management system for specialized healthcare needs operable on one of a computer including a visual display and a network of computers including visual displays, respectively, said system comprising (1) a system management database, (2) a data collection module in communication with the database and being configured to collect and store patient test data, patient information, and healthcare provider information, the data collection

module comprising at least one test data entry form for recording patient cardiological test data, (3) a data viewing and editing module in communication with the database and being configured to limit access to modify the patient test data to preauthorized healthcare worker persons, (4) a patient information access module in communication with the database and being configured to limit access to view tests performed on the patient to the preauthorized healthcare worker persons, (5) a physician viewing module in communication with the database operable to allow preauthorized physicians to view patient test data, ~~and~~ (6) a report generation module, and (7) means for displaying an image on said visual display, said image including a listing of said modules, respectively; and

said method including the steps of:

producing reports for one or more selected items of patient test data pursuant to:

providing an access image on said visual display;

entering a name and a preauthorized password of a healthcare worker person in respective information entry slots of said access image to gain access to the data collection module;

selecting a test data entry form for which data is to be collected;

recording account identification information of a patient whose data is to be collected and stored in the data collection module; and

recording the name of a physician and the name of a person entering data in the data collection module.

Claim 33. The method set forth in Claim 32 including the steps of:

entering in the system the name of the patient for whom patient test data is to be read; and selecting particular test data.

Claim 34. The method set forth in Claim 32 including the step of:

providing information to the healthcare worker person of tests that have been performed on a patient whose name has been entered in the system by way of the patient information access module.

Claim 35. The method set forth in Claim 32 including the step of:

selecting a date and location of specific tests that have been performed on a patient for printing by way of the report generation module.

Claim 36. The method set forth in Claim 32 including the step of:

selecting only tests which have not been previously read by a person having access to the system.

Claim 37. The method set forth in Claim 32 including the step of:

printing reports of plural tests performed on a patient whose name
has been entered in the system.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None